
In the matter of Compulsory Interest Arbitration
concerning the negotiations impasse between

DECISION AND AWARD

The Township of Burlington, New Jersey

and

of

Burlington Township FOP Lodge #84 and
Burlington Township Superior Officers
Association

Frank A. Mason, Arbitrator

Public Employment Relations Commission
Docket IA-2011-058

APPEARANCES

FOR THE TOWNSHIP: Frederick T. Danser, Esq., Apruzzese, McDermott, Mastro
& Murphy

Kevin J. McLernon, Township Administrator

FOR THE UNIONS: Richard D. Loccke, Esq., Loccke, Correia, Limsky &
Bukosky

Bruce Painter, Lieutenant

Richard D Sullivan & James Sullivan, Sergeants

John Bird, Jr. & Arthur Gittens III, Patrolmen

This case assignment by the PERC was made pursuant to the provisions of the legislation which govern the process and imposes limitations as to future budget enlargements of the Employer. The parties first met on July 14, 2011 at which time there was an attempt to mediate which resulted in a diminishment of issues but not an overall Agreement. We met again on July 22nd for a full hearing to afford the parties an opportunity to explain their respective positions but were not able to reach an accord. Sworn testimony was presented and the parties were given opportunity to examine and cross examine witnesses. The parties agreed to submit post hearing briefs on August 8, 2011. Those were received on the 8th and on the 10th.

FINAL PROPOSALS OF THE PARTIES

The final offer of the Employer was for a three year agreement, 1/1/2011 through 12/31/2013. Wage increases were included for each year of the Agreement.

Effective as of January 1, 2011 there was to be an increase of 2%. As of January 1, 2012 there would be an increase of 1%. On January 1, 2013 there would be a third increase of 1.5%.

For employees hired after July 1, 2011 there would be a separate wage scale which would add two steps from the current R. S. plus nine steps to a probation and 12 steps. At the maximum pay an officer hired under the new scale would be paid at the same level of income as those in the original plan.

The plan for current employees now receiving longevity would be frozen and the payments added to the individuals base pay, without altering the rate of pay for the maximum step in the range. Employees not yet receiving longevity pay would be precluded from eligibility and the same would be true for future employees.

There would be a modification of medical benefit co-payments. Doctor visits would be \$15 for 2012 and \$20 for 2013; emergency co-payments would be \$30 in 2012 and \$50 in 2013. Co-payments for prescription drugs would be \$10 for generics and for brand names \$20 for 2012 and \$30 for 2013.

The final offer of the Unions was for a four year Agreement, 1/1/2011 through 12/31/2014 with increases of 3.5% effective on January first of each year.

THE REQUIRED STATUTORY CRITERIA: in abbreviated form.

- A. The interests and welfare of the public.
- B. Comparison of the wages, salaries, hours and conditions of employment ...with others performing the same or similar services and with other employees generally.
- C. The overall compensation currently received including wages and benefits.
- D. Stipulations of the parties.
- E. The lawful authority of the Employer including limitations imposed by law.
- F. The financial impact on the governing unit, its residents and taxpayers. It should include, to the extent that evidence is introduced, the impact on taxes.
- G. The cost of living.
- H. The continuity and stability of employment.
- I. Statutory restrictions imposed on the employer.

THE POSITIONS OF THE PARTIES

The PBA presents the picture of an organized work force which has served the interests and welfare of the public with distinction. This has been accomplished in a Township faced with many challenging assignments and the compounding affect of the requirement for control and safety during the daily enlargement of the citizens using Township facilities and centers of business, entertainment, transportation networks and commerce which attract thousands of people daily. It asserts the passing through motor vehicles amount to some 200,000 per day which are in addition to the normal local traffic. There are hundreds of business and other commercial facilities in the Township which attract commerce, shoppers and diners from outside of the Township and which provide services for the citizens as well.

The PBA, in its views of the Interest and Welfare of the Public criterion suggest that Burlington police have demonstrated their performance recognition, both locally and on a national scale, has been very complimentary. It also noted that the call volume has increased in every year and the range of services provided continues to broaden to meet the needs of the population. The authorization as to the staff provides for 48 sworn officers but there have been many vacancies which have not been filled resulting in the number of active police personnel to 40 as of July, 2011, with one vacancy leaving the active staff at 39. In spite of this and the continually expanding range of responsibilities the performance record has been complementary by supervisory personnel and the administration. Thus the assertion that the public is receiving a high level of service from the short staff.

It is noted that these officers work a schedule of 2080 hours per year while many other police departments have less demanding schedules. The maximum pay achieved is claimed not to be high in comparison to some other departments in the area where differentials of as much as \$3100 were cited. It is also noted that Burlington includes the holiday pay in its base pay while some employers see that compensation as a supplement.

The PBA introduced a chart illustrating the average increases being contracted for by eight employers in the vicinity of Burlington Township. That average increase for 2011 was 2.425%; for 2012 it was 2.75% and for only four employers the 2013 increase was also 2.75%. Thus the offer of Burlington was seen as inferior to those other agreements. Of those eight only three had three year salary plans and in those cases the there were two with a composite of 7.5% and one at 5.5%. These figures were seen as closely resembling the proposal of the PBA in this instance. It went on to note that these have not increased the steps in the salary guide and most have fewer than the present guide for Burlington.

The Union notes that the salary issue should not be seen as if it stands alone with regard to the actual pay received because of new legislation which saps the pay for partial expense of the health benefits premiums required. It also notes that this expense is scheduled to increase dramatically and is likely to result in a reduction of net income to these officers

over the term of a new contract. It is suggested that the impact on an officer at top pay might, with family coverage, be required to pay as something like \$7000 or more, equivalent to a reduction in pay of more than 5%. This loss would be in addition to the increased pressures of whatever the cost of living imposes, which is viewed as likely to be substantial even if contained as has been the recent rate of less than 2%. Already the COL has shown a dramatic prospect of rising as a much higher rate than in the past two years and appears to go up more than 2% in 2011. Then too there is the prospect of increased pension costs and possibly income tax increases to think about.

The Union asks that I be reminded that the changes in compensation for police have historically not been closely associated with the private sector because of the unique responsibilities and associated conditions of employment not being related to profitability or economic growth. Rather, it is related to the special FLSA standards and to the personal qualifications, demands of the work and dangers under all conditions and at all times regardless of actual assigned hours. The assertion is made that police officers should be considered on a higher wage plane than private employment generally.

The position of the Employer differs dramatically as to this criterion, but not in conflict with the general views of the police which are held in high regard. The focus of the Employer is drawn instead to the fiscal ramifications of this mandated area for my consideration. The underlying premise of their proposal has to do with what is seen as the limitations of available moneys. But it goes deeper than a surface view of the current fiscal situation. It begins with developments over recent years. The first consideration has to do with the circumstances of the taxpayers. Here there is found an underlying problem in the unemployment rate. This is considered to be underestimated by virtue of people having secured part time employment. The effect is that there is substantially less money being earned and this translates into falling back on savings for many. The shrinkage of investment savings poses another threat to the welfare of many, especially seniors who are residents. In combination these and other important considerations has resulted in pressure to avoid tax increases. Combined with much inflated costs of operation this has resulted in taking unusual measures to achieve affordable budgets. One of the most obvious of this crisis has been the reduction of employment with the Township from 170 staff in 2008 to 138.5 in 2010.

Some of the reasons for this were clearly related to the collapse of the economy in general but the impact was felt by specific changes. There was a moderation in revenue from interest on investments which fell from \$1,465,757 in 2006 to \$346,944 in 2010. Another set back was the reduction of ERT/CMPTR income of \$1,021,305 from 2006 throughout 2010, which included \$746,092 in 2010 alone. There was an inability to regenerate surplus which resulted in a fund balance decline of almost 1.5 million dollars. Added to this budget problem were increases in pension and health insurance which amounted to more than 1.7 million dollars. In January of 2010 blue collar workers were granted a 3.5% increase based on their contract with the Township but that was reduced by 2% in a later agreement in order to reduce the need to achieve savings through layoff.

In 2011 the Township granted no increase to clerical workers and non-union workers were limited to increases up to 1.5%. There followed a further reduction in staffing level of 14.5 full time equivalents to bring the total employed to 138.5. A resounding decline from the 170 employed in 2008. Losses to the Police Department were limited to leaving open the positions previously occupied by now retired officers. In total there was a reduction in staff of 27%. The Employer has indicated it very much wishes to add three new police appointments to the staff, a wish they are hoping to satisfy by achievement of some of the savings set forth herein.

The wage increases for represented clerical employees amounted to 2%, or 0.66% per year for a three year period. Non union employees averaged 0.83 percent during that same period with a range of 2.5% to actual wage reductions. There were contractually negotiated increases which totaled 11.25% during those three years but which were reduced by the 2% concession noted above.

In the period of 2006 through 2010 police negotiations produced an average increase of 4.1% without consideration of step movement or longevity payments being added to the calculation. This contrasts sharply with the experience of non-police and is stated as the reason for the Township to seek a modification of the PBA's terms of Agreement. A part of that determination has to do with the impossibility of justifying the differential treatment of other employees and a more elemental rationalization is that police budget for salaries and wages represents more than 52% of the amount of income from taxation

These problems underly the Township's positions concerning a new Agreement. The Township feels that the need to achieve savings is their foremost goal in these negotiations. There is an objective to gain some of the much needed savings by modification of the longevity program, establishing a separate salary guide for new employees, and limiting the wage increases as outlined above, while providing reasonable annual increases in salary. The longevity program would be frozen and officers currently receiving longevity would continue to receive same as an added cash payment but frozen as to the current level being paid. No other employees would be entitled to longevity credits or payment.

The Employer acknowledged the relief provided by statute which requires part of the medical insurance premium to be paid by the individual officer. However, the request of the Union to offset that by granting a higher level of base wage increase was rejected both because it would be counter to the intent expressed by the government and because it helps, in a small way, to relieve the pressure for expenditures which realistically can not be afforded.

The statutory requirement for the Employer to keep future budget increases within a 2% cap was imposed to limit the growth of local government expenditures and, while not seen as a factor in this proceeding it certainly could become significant as the Township contemplates the future and economic changes which may curb its flexibility as to financial planning.

This discussion is, in part, intended to demonstrate the need to illustrate the importance placed on the criterion, Interests and Welfare of the public, which can be seriously affected by whatever the determination of this dispute may bring about. Obviously anything which imposes greater stress on the limited resources of the Township could impose restrictions on services provided or the pressure to increase tax revenues which have been expanded substantially while the citizens' toleration of withstanding higher tax rates was greater than at present. The prospect of restoring services, including the restoration of police forces, as is anticipated would be diminished in direct proportion to any excess spending. These considerations support my conclusion that this criterion is of singular importance to everyone in the Township.

As to the comparison of wages, benefits and other elements of this criterion it is clear that the Township has maintained a very competitive level of overall compensation with many of the surrounding communities. It doesn't rank as number one in all elements of compensation but is within the top quartile. The Union has introduced some evidence as to wage and benefits being provided in other jurisdictions. Many of those are far from the immediate area of Burlington but of those which are nearby the relative compensation delivered by the Township ranks very highly. The wage increases which were set forth in the Union's exhibit noted above demonstrated a higher percent of improvement than is contained in the offer of Burlington. However, a reasonable level of improvement provided in this award will assure a relatively unchanged comparison with those communities. The circumstances which impact on the fiscal stability of Burlington preclude it from being as generous as it was in the prior contract period where it delivered annual increases averaging nearly 4%.

The totality of the compensation received is very comparable to that of other police departments in the area and indeed in the state. It includes a generous vacation program, health insurance, retirement compensation, holidays and sick leave, among other benefits. Undoubtedly this is one of the reasons that the Union has focused its demands exclusively on the issue of wage increases in this negotiation for a new Agreement.

As to the question of comparability to other sectors of the economy, there has been a growing recognition of the highly separate consideration of police as different from non-police. However, the police in Burlington Township have been treated very well in any comparison with any private sector group. During the prior ten years the increases in compensation of police have been nearly a third more than others. This pattern has been repeated in the Township in dealing with other groupings of its employees whether or not union represented. In addition the police have been given preference with regard to maintenance of employment in the Township wherein only those leaving for retirement have affected their ranks while the employment of non-police, as a percentage of the work force, has been more substantial. This trend is reflected in the evident desire of the Township to restore three more police to the force as soon as there is any sufficient funds to do so.

The actual work of the police in Burlington is very much comparable to most other police organizations and does not present any rationale for greatly differing treatment.

There were no stipulations of the parties.

The authority of the Township to consider and be guided by the cost involvement of any resolution to this dispute is present but not a factor of consideration under the circumstance of the particular issues presented. Both parties understand the limits of the Township's flexibility concerning the expansion of its budget. There is no element of this award which will focus on that limitation.

The financial impact of this award should not pose a highly significant burden to the Township as its costs will be moderate and there will be offsetting savings which will provide long term relief. I have noted above the fiscal problems of the Township, in particular the reduction in several elements of income, State aid and investment return as well as the increased level of expenditures for health benefits and pension contributions. The impact of these fiscal requirements has been passed on to tax payers where the annual tax revenue has increase dramatically and is now an issue of contention by the public.

The cost of living is of some real concern to all. In particular this is a factor in the life style and comfort of employees who are experiencing greatly increased costs related to transportation and foodstuffs, every day consumption items, as well as the reduction on any investment or savings. Coupled with these is the fear of long term continuity of these troublesome conditions. Even the skyrocketing cost of education for children has become a major consideration for many. The fact that property taxes have spiraled upward in the past few years adds to the anxiety of the population and to their resistance to further costs.

The Township has been sensitive to this generalized development which, accompanied by the failure of much of its anticipated income streams, poses a great problem. It does not believe there is any acceptance for additional taxation and has no means of controlling its expenses beyond the actions already taken, such as reduction of staff and conservative treatment of employees. Notwithstanding this dilemma the Township as made an offer in this proceeding which, on balance is an attempt at fairness to the police involved. That offer wasn't accepted and this precipitated the interest arbitration to resolve the matter.

CONCLUSIONS

I am convinced that both parties have made real efforts to present positions which are not unreasonable. The demands are within the framework of an effort to arrive at a resolution which is fair to both parties. Each has illustrated the need for acceptance of their respective positions based on a conservative and reasonable understanding of the conditions which affect the Township and its valued employees. There is no very obvious solution to this type of problem which is rooted in conditions beyond the control of either of them. I am confronted with the creation of a solution which is not likely to be seen as a victory to either party. The Union will not get enough as, in their appraisal, is due the

membership and the Township will not get the entirety of what it sees as urgently needed to comfortably proceed into the future. In the face of this dilemma I will attempt to accommodate, as much as possible the objectives of each.

One of my considerations has to do with the issue of the probable changes in the economy over the next several years. This is a matter for conjecture and does not lend itself to absolute factual analysis. My first determination is to award a contract period of only three years. This is seen as the safest and most logical period. For the Employer it represents a protection involving the legal aspects of a second round of negotiations which is important. For the Union it means having to undergo the next negotiations within the then existing strictures of the law. I believe this is consistent with the intent of the legislature.

As to the issue of wage increases I am of the conviction that a moderately more generous program than was proposed by the Employer is warranted. This conclusion is based on several things. It is very likely that the cost of living will escalate well beyond the pace of change in the past few years. The offer of the Township does not appear to contemplate this, but relies on its fiscal limitations. Additionally the employees are expected to see greater reductions of their net income during that period and the Union has presented arguments of a conservative nature which suggest a contemplation of this while proposing modest increases. I am therefore awarding the 2% increase in pay as proposed by the Township for 2010 but effective on July 1, 2010 which will provide a reasonable increase in base income without some of the ordinary costs. That saving will make it possible for an increase of 2% in 2012 which I will award to be partially offset as to cost while raising the pay rate to a reasonable level. Again I will make that increase effective on a delayed basis to April 1, 2012 to control cash flow but to assure a reasonable and competitive pay structure. On January 1, 2013 there shall be an additional increase in pay of 2%.

It is my conviction that these raises are a reasonable compromise between the offers of the parties and that they will be seen as fair given all of the circumstances noted above.

In addition I award the request of the Employer to eliminate the longevity plan now in effect as of December 31, 2011. All recipients of longevity will have their dollar value frozen as of that time and hereafter receive that money annually as a cash supplement to their income. New hires as well as those not entitled to longevity payments as of December 31, 2011 will not be entitled to longevity compensation. I take this step to partially offset the too rapidly increasing costs of wages now experienced by an employer under great financial stress.

I also award the proposed new salary structure and ranges set forth in the Township's list of demands. This will be in effect immediately but should not be imposed on any new hire already on the payroll as the date of this award.

The modification of co-payments for medical benefits as were listed on page two of this document are also awarded.


All elements of this arbitration proceeding are intended to have been disposed of by the determinations set forth above. Should there have been any other issues advanced by either party they may be deemed to have been rejected.

AWARD

The terms of this award are confirmed as set forth above and are intended to dispose of all issues subject to this proceeding.


Frank A. Mason

On this 19th day of August before me personallu came and appeared Frank A, Mason, to me known and known to be the individual described in and who, in my presence, executed the foregoing opiion and award and he acknowledged to me that he executed the same.


BARBARA L. SCHWEITZER
Notary Public - New Jersey
Somerset County
My Commission Expires August 22, 2012